

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**T.D., Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Jacksonville, FL, Employer**

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**Docket No. 10-1003  
Issued: December 3, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 1, 2010, appellant timely appealed the January 12, 2010 merit decision of the Office of Workers' Compensation Programs, which denied her left ankle claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.<sup>1</sup>

**ISSUE**

The issue is whether appellant's left ankle condition is causally related to her November 2, 1994 employment injury.

**FACTUAL HISTORY**

Appellant, a 48-year-old distribution clerk, was injured in the performance of duty on November 2, 1994. She was struck by a forklift, which knocked her to the floor and then ran

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<sup>1</sup> The record on appeal contains evidence received after the Office issued its January 12, 2010 decision. The Board may not consider evidence that was not of record when the Office rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2010).

over her left foot. Appellant underwent surgery on November 4, 1994 to repair a displaced left hallux proximal phalanx fracture.<sup>2</sup> The Office accepted her claim for left shoulder sprain and fracture phalanges of left foot.<sup>3</sup> Appellant received wage-loss compensation. On March 31, 1995 she returned to work as a modified distribution clerk with no loss in earnings.<sup>4</sup> On September 7, 1995 the Office granted a schedule award for seven percent impairment of the left lower extremity.

Appellant had regular follow-up visits with Dr. Hiram A. Carrasquillo, her attending Board-certified orthopedic surgeon, through August 1, 1996. Dr. Carrasquillo noted that she was doing relatively well. On physical examination there was no evidence of swelling in appellant's foot, but there was still some tenderness and decreased range of motion. Dr. Carrasquillo also noted that appellant's orthotics had completely worn down. He gave her a new prescription for orthotics and advised her to return on an as needed basis.

After an apparent five-year lapse in treatment, appellant was seen on January 29, 2002 by Dr. Robert J. Kleinhans, a Board-certified orthopedic surgeon,<sup>5</sup> who noted that a forklift ran over her left foot in 1994 and she was diagnosed with a fracture of her left first toe and a crush injury. Dr. Kleinhans further noted that after undergoing surgery appellant was in a wheelchair for about six months, and then some time afterwards she developed plantar fasciitis. Physical examination revealed left forefoot tenderness, mostly in the first metatarsal area. There was also tenderness over the lateral ankle ligaments and the peroneal sheath. Appellant had a well-healed dorsal scar over the first toe and good range of motion in the ankle, foot and toes. Recently obtained x-rays of the foot and ankle showed no fracture, dislocation or degenerative changes. Dr. Kleinhans diagnosed left foot crush injury with left peroneal tendinitis. He recommended light-duty with no prolonged standing and walking. Dr. Kleinhans prescribed medication and advised appellant to return in a month.

Following Dr. Kleinhans' January 2002 examination there was an apparent seven-year lapse in treatment with respect to appellant's left foot. On May 6, 2009 Dr. Rahul V. Deshmukh, a Board-certified orthopedic surgeon, diagnosed internal derangement of the ankle. He noted significant posterior tibialis tendinitis and lateral laxity with possible anterior talofibular ligament (ATFL) tear.<sup>6</sup> The reported history was that appellant was run over by a forklift in November 1994 and sustained a left shoulder contusion and "left foot/ankle injury." Dr. Deshmukh did not specifically mention the multiple fractures appellant sustained or her November 4, 1994 surgery. He recommended obtaining a magnetic resonance imaging (MRI) scan of the left ankle.

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<sup>2</sup> Appellant also had nondisplaced left fourth and fifth distal phalanx fractures.

<sup>3</sup> Appellant also has an accepted claim for bilateral carpal tunnel syndrome, which arose on or about February 22, 1991.

<sup>4</sup> By decision dated July 3, 1995, the Office found that appellant's position as a modified clerk represented her wage-earning capacity. She had zero loss in wage-earning capacity.

<sup>5</sup> Dr. Kleinhans had previously treated appellant for carpal tunnel syndrome.

<sup>6</sup> Dr. Deshmukh also provided a diagnosis with respect to appellant's left shoulder.

The June 16, 2009 left ankle MRI scan revealed a rupture of the anterior talofibular ligament. It also showed a prior injury to the anterior inferior tibial fibular ligament, which was otherwise intact.

In a follow-up visit on July 15, 2009, Dr. Deshmukh examined appellant and reviewed the recent left ankle MRI scan. He diagnosed significant left ankle pain and dysfunction related to a complete ATFL tear. Dr. Deshmukh recommended surgery for a left ankle Broström procedure and sought approval from the Office.

On August 6, 2009 the Office advised appellant that based upon the current evidence it could not authorize the recommended left ankle ligament repair surgery. It requested a narrative report from her physician explaining how the newly diagnosed condition was causally related to her November 2, 1994 employment injury. Appellant was afforded 30 days to submit the requested medical evidence.

In an August 17, 2009 report, Dr. Deshmukh stated that appellant's left ankle injury was a direct result of the November 2, 1994 employment accident where she was "hit by a forklift." He stated that "[appellant] fell and injured her shoulder and the forklift ran over her left ankle." Dr. Deshmukh further stated that the injury-related diagnosis was left ankle osteoarthritis.

In a decision dated September 10, 2009, the Office denied the requested surgery because the evidence did not establish a causal relationship between the accepted injuries and the proposed left ankle ligament repair.

By decision dated January 12, 2010, the Branch of Hearings and Review affirmed the September 10, 2009 decision. The hearing representative found that appellant had not established that her current left ankle condition was causally related to her November 2, 1994 employment injury.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>7</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>8</sup>

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<sup>7</sup> 5 U.S.C. §§ 8101-8193 (2006).

<sup>8</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.<sup>9</sup> Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>10</sup>

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>11</sup>

An injured employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which the Office considers necessary to treat the work-related injury.<sup>12</sup>

### ANALYSIS

Dr. Carrasquillo, who began treating appellant the day after her November 2, 1994 employment injury, did not diagnose a specific injury of the left ankle. His treatment notes covering almost a two-year period following the November 1994 injury do not document any left ankle complaints. There was evidence of plantar fasciitis, but no specific left ankle injury or ankle complaints. Dr. Carrasquillo advised that appellant's fractures had completely healed as of May 4, 1995, and she had reached maximum medical improvement. The record indicates that Dr. Carrasquillo last examined appellant on August 1, 1996, and she was reportedly doing relatively well. He did not mention any specific left ankle complaints at the time. More than five years later Dr. Kleinhans diagnosed left peroneal tendinitis. However, his January 29, 2002 report does not include an opinion on causal relationship. Other than noting appellant sustained a left foot crush injury in 1994, Dr. Kleinhans did not explain how appellant's current tendinitis was related to her November 2, 1994 employment injury.

Another seven years passed before Dr. Deshmukh diagnosed a complete ATFL tear, as demonstrated by the June 16, 2009 left ankle MRI scan. He recommended surgery and sought authorization from the Office, but he did not adequately explain how the left ATFL tear was causally related to appellant's November 2, 1994 employment injury. Dr. Deshmukh diagnosed left ankle osteoarthritis, which he attributed to appellant's November 2, 1994 employment injury. However, he appears to have relied upon an inaccurate history of injury. Dr. Deshmukh stated in an August 17, 2009 report that the "forklift ran over [appellant's] left ankle." This history of injury is inconsistent with appellant's prior statements as well as earlier medical reports that documented an injury to the forefoot, and more specifically, fractures of appellant's first, fourth and fifth toes. Moreover, the various reports Dr. Deshmukh's submitted prior to the hearing

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<sup>9</sup> *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

<sup>10</sup> *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>11</sup> *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>12</sup> 20 C.F.R. § 10.310(a).

representative's January 10, 2010 decision do not mention appellant's fractures or the surgery she underwent on November 4, 1994.

The medical evidence of record does not establish that appellant sustained injury to her left ankle on November 2, 1994. There is also no competent medical evidence indicating that appellant subsequently developed a left ankle condition as a consequence of the multiple toe fractures she sustained on November 2, 1994. Appellant's multiple fractures were considered completely healed as of May 1995. Therefore, the proposed left ankle ligament repair does not appear necessary for the treatment of appellant's previously accepted fractures. The Board finds that the Office properly declined to accept appellant's claim for a left ankle condition. Because the proposed left ankle ligament repair does not appear to be necessary for the treatment of appellant's accepted conditions, the Office properly declined to authorize the recommended surgery.

### **CONCLUSION**

Appellant has not established that her current left ankle condition is causally related to her November 2, 1994 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board